

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL MCCULLOUGH and	:	CIVIL ACTION
DIANE MCCULLOUGH	:	
	:	
v.	:	
	:	
CHRISTOPHER T. COX	:	
THOMAS A. UNGER	:	NO. 97-6560

MEMORANDUM ORDER

This is a personal injury action arising from an automobile accident in Wilmington, Delaware on November 7, 1995. Plaintiff are citizens of Delaware. Defendants are citizens of Pennsylvania and Virginia respectively. Jurisdiction is predicated solely on diversity of citizenship.

"Federal courts have an ever-present obligation to satisfy themselves of their subject matter jurisdiction and to decide the issue sua sponte." Liberty Mut. Ins. Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995). See also American Policyholders Ins. v. Nyacol Products, 989 F.2d 1256, 1258 (1st Cir. 1993) ("a federal court is under an unflagging duty to ensure that it has jurisdiction"); Steel Valley Authority v. Union Switch & Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987) ("lack of subject matter jurisdiction voids any decree entered in a federal court"); Wisconsin Knife Works v. National Metal Crafters, 781 F.2d 1280, 1282 (7th Cir. 1986) ("[t]he first thing a federal judge should do when a complaint is filed is check to

see that federal jurisdiction is properly alleged").

Because plaintiffs have certified that their "Demand" is \$50,000, it appears that the court lacks subject matter jurisdiction. Because it is possible that plaintiffs could in good faith and consistent with the strictures of Fed. R. Civ. P. 11 file an amended complaint averring damages in excess of \$75,000, their complaint will be dismissed without prejudice. See 28 U.S.C. § 1332(a).

Ordinarily the court would let the matter stand there. Because improper venue may be waived, it is not an appropriate basis for a sua sponte dismissal. Because plaintiffs filed this case just before the expiration of the limitations period, see 10 Del. C. § 8119, and defendants may well elect to seek dismissal pursuant to Rule 12(b)(3), it does seem appropriate to point out that venue does not lie in this district.

Since all of the defendants do not reside in the same district, venue may be predicated on the amenability to service of one defendant in this district only "if there is no other district in which the action may otherwise be brought." See 28 U.S.C. § 1391(b)(3). This action clearly can be brought in the District of Delaware since that is where virtually all of the events giving rise to plaintiffs' claims occurred. See 28 U.S.C. § 1391(b)(2).

ACCORDINGLY, this                    day of October, 1997, IT IS  
HEREBY ORDERED that the complaint in this action is DISMISSED  
without prejudice to plaintiffs, if in good faith they can aver  
damages exceeding \$75,000, to reassert their claims in the  
federal court in Delaware or, if they wish to accept a potential  
dismissal for improper venue, in this court or otherwise in an  
appropriate state court.

BY THE COURT:

---

JAY C. WALDMAN, J.